

IN THE ATHENS COUNTY MUNICIPAL COURT
ATHENS, OHIO

COLUMBIA-ATHENS, LTD.,

Plaintiff

vs.

VICKIE BAGLEY,

Defendant.

Case No. CIG 87-2-23

FILED

ATHENS COUNTY MUNICIPAL COURT

DECISION and
JUL 1 1987 JOURNAL ENTRY

CLEARANCE
ATHENS COUNTY, OH

This cause came on for trial on May 11, 1987 pursuant to assignment upon Plaintiff's Complaint and the Answer of Defendant. Present in Court was Plaintiff's representative together with Attorney Robert W. Stewart. Also present in Court was Defendant Vickie Bagley with Attorney Timothy J. Foran. The Court, having heard the evidence and the arguments of counsel, hereby finds as follows:

1. The Plaintiff and Defendant entered into a lease agreement covered by HUD Regulations beginning January 1, 1986. The rental unit is located in Athens County, Ohio and this Court has jurisdiction of the Complaint herein.

2. Defendant is required by the terms of the lease to pay the sum of Thirty-three Dollars (\$33.00) on the first of each month pursuant to the lease agreement. Defendant failed to make any payment during the thirteen months of her lease prior to February, 1987 in a timely and appropriate manner.

3. Defendant testified that Forty Dollars (\$40.00) in cash was stolen from her residence on February 3, 1987 and

Defendant was unable to pay the rent due for that month. Defendant never received written notice of her rights to request either partial payment or a payment plan in the event of an emergency. Further, while there is some conflict in the testimony as to arrangements made, it is clear that Defendant misunderstood her rights and responsibilities in relation to the HUD Housing Agreement.

4. Defendant is current with rent at the present time although said payments have been made to her attorney's trust account.

The Court concludes that Writ of Restitution should not issue. Involuntary termination of tenancies is avoided to the maximum extent consistent with sound management pursuant to the "Housing Management Agreement" under which the property is managed. (See paragraph 12 of the Agreement).

The Fourth Appellate District in Heritage Hills, Ltd. v. Anita Nusser, Case No 1183 has held that "a lease will not be forfeited for mere nonpayment of rent where the equities of the parties can be otherwise adjusted." (Citations omitted) Page 4, supra. Further, it is well established Ohio Law that it is only where the conduct of the Defendant is willful or malicious or where Plaintiff cannot be made whole otherwise than by forfeiture that equity will not relieve a forfeiture. Zanetos v. Sparks (1984), 13 Ohio App. 3d 242.

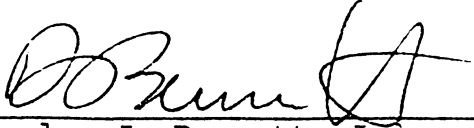
In the instant case, Plaintiff may be made whole by merely accepting Defendant's tender of rent payments due.

By accepting the rent payment due the Plaintiff avoids the termination of Defendant's tenancy which would affect Defendant's minor child.

In the event that Plaintiff should seek in the future to obtain a forfeiture of any H.U.D. regulated premises that Plaintiff comply fully with the letter and the spirit of the H.U.D. Housing Management Agreement. Provisions for utilizing the services of the Social Services Director as well as clearly informing the tenant in writing of available alternatives to avoid a forfeiture where the nonpayment of rent is caused by an emergency are consistent with the H.U.D. Housing Agreement and consistent with sound financial management under the Agreement.

Upon the foregoing, the Court finds that Plaintiff has failed to prove entitlement to restitution by a preponderance of the evidence and the Court therefore finds for Defendant on the issue of restitution of the premises. As to the request for February, 1987 rent plus all late charges and future rents, it is the ORDER of the court that Plaintiff recover late charges for the month of February, 1987 plus appropriate rent from that month to present.

Costs to Plaintiff.



Douglas J. Bennett, Judge

cc: Robert Stewart
Attorney for Plaintiff

Timothy J. Foran
Attorney for Defendant